

**Plumbers and Steamfitters Local 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Orcon Inc. and Cal Orcon East Inc.) and Todd Anderson.** Case 21-CB-7418

March 2, 1982

## DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On July 17, 1981, Administrative Law Judge Russell L. Stevens issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Plumbers and Steamfitters Local 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, its officers, agents, and representatives, shall take the action set forth in said recommended Order.<sup>2</sup>

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>2</sup> In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

## DECISION

### STATEMENT OF THE CASE

RUSSELL L. STEVENS, Administrative Law Judge: This case was heard in Los Angeles, California, on June 2, 1981.<sup>1</sup> The complaint, issued September 29, is based on a charge filed September 22 by Todd Anderson, an individual. The complaint alleges that Plumbers and Steam-

fitters Local 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (herein called Respondent or the Union), violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record, and from my observation of the witnesses and their demeanor, I make the following:

### FINDINGS OF FACT

#### I. JURISDICTION

At all times material herein Orcon Inc. (herein called Orcon), a California corporation, has been engaged in the business of plumbing contracting, with its principal place of business located at 2070 South Yale, Santa Ana, California. In the course and conduct of its business operations during the past 12 months, Orcon purchased and received goods and materials valued in excess of \$50,000 from suppliers located within the State of California, each supplier of which, during the same period of time, purchased said goods and materials directly from suppliers located outside the State of California.

At all times material herein Cal Orcon East Inc.<sup>2</sup> (herein called Orcon East), a California corporation, has been engaged in the business of plumbing contracting, with its principal place of business located in Rancho Mirage, California. In the course and conduct of its business operations during the past 12 months, Orcon East purchased and received goods and materials valued in excess of \$50,000 from suppliers located within the State of California, each of which suppliers purchased said goods and materials directly from suppliers located within the State of California, each of which suppliers purchased said goods and materials directly from suppliers located outside the State of California.

I find that, at all times material herein, Orcon and Orcon East jointly are, and each of them is, employers engaged in commerce and in businesses affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

Plumbers and Steamfitters Local 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

<sup>2</sup> As noted in General Counsel's brief, and as the president of the corporation (Robert Burpo) testified, the legal name of the Corporation is Cal Orcon East Inc.

<sup>1</sup> All dates hereinafter are within 1980, unless stated to be otherwise.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*<sup>3</sup>

From July 1, 1977, Orcon was a member of the Association of Plumbing and Piping Industry Council, a multiemployer association (herein called the Association) which negotiated with the Southern California Pipe Trades District Council No. 16 of the United Association (herein called the District Council), of which the Union was a member. The plumbing-heating and piping industry of southern California agreement, to which Orcon was bound, was effective July 1, 1977, through June 30, 1980. That agreement was superseded by an agreement effective July 1, 1980, through June 30, 1983. By signature on an interim agreement, executed June 30, 1980, Orcon East became bound to the 1980-83 industry agreement. The 1980-83 agreement was signed by representatives of Orcon East on October 27, 1980.

Both agreements, 1977-80 and 1980-83, provide in pertinent part:

17. *Exclusive Hiring.* Contractors shall hire qualified journeymen by calling the Local Union having craft and geographical jurisdiction in which the job is to be performed . . . .

\* \* \* \* \*

31. Contractors shall be privileged to call for men by name and transfer men as provided in Paragraph 32 and 36. Such requests shall be honored without regard to the individual's position on the out-of-work list. . . .

32. The first man on each job in the Contractor's own area in each classification shall come from Group 1 or Group 2 and may be called by name. . . . The second man on each job in each classification shall come from Group 1, and may be called by name. The third man on each job in each classification shall come from the top of the Group 1 list. Thereafter, all other calls by name in each classification shall be on a 50-50 alternating basis from Group 1 list, with the fourth man permitted to be a call by name. . . .

The constitution of Respondent's International provides, in section 196, that "a local on strike or lockout shall have power to reject all travel or transfer cards."

At times relevant herein, a condominium project was under construction by Devonshire Development Corporation in West Covina, California. Orcon, the parent company of Orcon East, was a plumbing subcontractor on the project. Robert Burpo and his sister owned Orcon; Robert Fuller was general manager (at times relevant herein); and Freda Fuller, Robert's wife, was the office manager. On July 1, Orcon discontinued work at the project, and the work was assumed by Orcon East, whose president and manager was Burpo. Robert Fuller, a member of Plumbers Local 582, discontinued working

for Orcon June 28, and immediately began working for Orcon East as superintendent.<sup>4</sup>

As part of her office duties, Freda Fuller was authorized to, and did, fill out form letter requests addressed to the appropriate local union, asking for the dispatch of employees to jobsite. She performed that chore for both Orcon and Orcon East, and signed Burpo's name on the requests, after having been authorized by Burpo to do so. Burpo's office was in Rancho Mirage, California, and he and Freda Fuller frequently talked by telephone. After the forms were filled out, Freda gave them to Robert Fuller, kept a copy of each letter for Orcon's personnel files, and sent a copy of each to Burpo in Rancho Mirage. In addition to employees requested by name, Orcon and Orcon East also obtained from appropriate local unions, employees who were dispatched "off the book"; i.e., employees who had reported to the Union and who had signed the out-of-work list.

Todd Anderson, the Charging Party herein, is a journeyman plumber whose union membership is in Local 78 (Los Angeles), but who sometimes works out of Local 398 on a travel card. In June 80 Anderson was employed out of Local 398 on the Devonshire project, working for Orcon under the supervision of Gregory Fraijo, who was a member of Local 582 (Santa Ana), and who also was working on a travel card. On June 30 David Liskey, business manager and dispatch administrator for Local 398, visited the project and talked with Anderson, Fraijo, and one other employee. Liskey told the three employees that Orcon had not been paying their fringe benefits due under the contract, and that they would not be able to work on the project until all benefits were paid to a current status. Anderson, Fraijo, and the third employee, similarly employed, left the job with the understanding that they were to check with Liskey each morning or evening thereafter to ascertain whether Orcon had paid, and amounts due. If they were paid the employees could return to their jobs. Anderson called Liskey on the telephone July 1 and 2, but Liskey said Orcon still had not paid, and that, therefore, Anderson could not return to the job. Anderson called Fraijo on the evening of, July 2, and learned that Fraijo had been dispatched to the job that morning as a foreman for Orcon East. Anderson did not work thereafter, until July 17.

Members of the Union struck some employers on July 1, after the 1977-80 contract expired, but most contractors, including Orcon East, signed interim agreements and employees of those contractors continued to work. Employers who did not sign such agreements were members of the Association; Orcon was a member of the Association. During the strike, which ended July 17, approximately 60 to 100 of Respondent's 1,200 members were out of work—the others were not on strike.

B. *Dispatch Request for Anderson*

One of the principal areas of controversy is whether Orcon East requested that Anderson be dispatched to the Devonshire project. A second area of controversy is the

<sup>3</sup> This background summary is based on stipulations of counsel, and on credited testimony and evidence that is not in dispute.

<sup>4</sup> Fuller credibly testified that he notified the Union of this change.

reason Liskey did not dispatch Anderson to the Devonshire project at the same time Fraijo was dispatched.

Burpo testified that his Orcon "partnership" with his sister was dissolved, that Orcon discontinued doing business, and that Orcon East, a separate company, took over Orcon's business on July 1. The record contains no evidence to the contrary. Burpo was not cross-examined on this point, and Burpo's testimony relative to the matter is credited.<sup>5</sup>

Freda Fuller credibly testified that she prepared letter requests for each and every Orcon employee who worked on the Devonshire project, and that all of them were prepared on June 30. She said that she never before had filled out requests in such manner for all employees on one job.<sup>6</sup> Freda testified that she does not know what happened to the copies of the letter requests she put in the personnel files.

Burpo testified that, in early July, he received 40 or 50 copies of letter requests for Orcon on various jobs, and that he kept them approximately 3 months, after which he threw them away. He said he is not familiar with dispatch procedures.

Robert Fuller testified that on July 1 or 2, he visited the union hall and attempted to obtain a union dispatch of two employees by name request, and five employees off the out-of-work list, for the Devonshire project. He said the name requests were for Fraijo and Anderson.<sup>7</sup> Fuller testified that he instructed Freda Fuller to prepare the two name requests. It is clear from the record, and found, that the two name requests were among those prepared by Freda Fuller, on Orcon East stationery. He said he talked with Liskey, and handed to Liskey a check for past benefits through June, plus the letter requests for Fraijo and Anderson, which he had received from Freda Fuller.<sup>8</sup> Fuller testified that Liskey accepted the check and the Fraijo request, but that Liskey said "he wouldn't let me have Todd Anderson" because "he was not a member of his local." Fuller said Liskey returned Anderson's request, which Fuller took back to the office and later threw away. Fraijo, and other employees, reported to work the following day, but Anderson did not.<sup>9</sup>

<sup>5</sup> Burpo testified that the reason for his providing labor on projects formerly being done by Orcon was that Orcon East had signed the interim agreement with the Union, and Orcon had not signed.

<sup>6</sup> Freda Fuller's testimony during cross-examination on this subject was ambiguous, and at one point seemed to be self-contradictory. She said she prepared a letter "for every single employee then [note: June 30] on the payroll of Orcon" but immediately thereafter stated that she did not "ever before fill out a letter for every employee." Upon examining her testimony in its entirety it is clear, and it is found, that she testified that she prepared letter requests as instructed, for all employees on the Devonshire project, approximately June 30, and that such preparation was unique in her experience at Orcon. Further, it is found that all letters prepared by her on June 30 were on behalf of, and were on letterhead stationery of, Orcon East.

<sup>7</sup> Fraijo was requested as a foreman; his supervisory status is not in dispute. Anderson's journeyman status also is not in dispute.

<sup>8</sup> Robert Fuller testified that he had talked with Liskey on the telephone a day or so prior to going to the union hall, and that Liskey had told him that the past due fringe payments for the project would have to be paid, and that Liskey must have a letter stating that Orcon East was "taking over the job."

<sup>9</sup> In addition to Fraijo, the Union dispatched employees off the out-of-work register to the Devonshire project.

Anderson testified that when he talked with Fraijo on the telephone July 2 (discussed *supra*, under sec. iii.A.) Fraijo told him the past due benefits had been paid under Orcon East's name. Anderson then called Robert Fuller on the telephone and asked why he did not get sent back to the job, when Fraijo did. Fuller said Liskey refused to dispatch Anderson. On July 3 Anderson telephoned Liskey and asked why he did not get dispatched to the job when Fraijo did, and Liskey replied "he no longer needed any Local 78 people to work that job, that he would staff it and run it with Book 1 people out of 398." Anderson continued:

I said I didn't get fired or laid off and I said, how come I am not entitled to a job there. He said that I should just go contact Calvin Emory and see about working my own territory and also asked me if my travel dues were current at that time, about which I said, yes.

On July 7 Anderson received a memorandum from the Union, reading as follows:

This is to inform you, your travel card dues are current and your card has been returned to your home local. Any questions, please contact your home local.

Prior to receipt of the memorandum, no one from local 398 had said anything to Anderson about returning the travel card to Anderson's home local.

Liskey testified that many contractors work within the jurisdiction of several locals, and contractors regularly like to use their own supervisors, wherever the jobs are, but customarily use journeymen dispatched from locals. Thus, most travel cards deposited with Local 398 are those of supervisors. Pursuant to section 196 of its constitution,<sup>10</sup> the Union has the right to reject, or to return to the home local, the travel card of any union member during a strike or lookout. Shortly before the strike, Liskey decided for local 398 to return all travel cards of employees on strike, except supervisors, to their home locals, and he so advised the district council. By telephone call on July 1, Everett Schell, a business manager of the District Council, affirmed that decision. More than 50 travel cards then were returned to locals, of which more than 20 were returned to Local 78, which was Anderson's Local, and the employees were notified of that action by letter from the Union. Only cards of employees on strike were returned; those who continued to work (under an interim agreement) did not have their cards returned. Orcon East had signed an interim agreement, and its employees were not on strike. Orcon, for whom Anderson worked, was on strike, and that was the reason Anderson's travel card was returned to Local 78. Fraijo worked for Orcon East, and he was a supervisor, therefore, his travel card was not returned to his local. After the strike was over, nearly all travel cards that had been returned to locals were redeposited by employees with local 398. A day or so after Liskey talked with em-

<sup>10</sup> Resp. Exh. 1.

ployees at the project site and took them off the job (discussed *supra*), Fuller came to the union hall and presented to Liskey a request letter for Fraijo and a check for benefits. There was no discussion concerning Anderson, nor did Fuller present a letter of request for the dispatch of Anderson.

### C. Discussion

So far as the request for Anderson's dispatch is concerned, it is clear, as found *supra*, that Freda Fuller filled out a letter form on Orcon East stationery requesting the dispatch; that she gave the form to Robert Fuller;<sup>11</sup> and that Robert Fuller was to give the form to Liskey. Burpo, Robert Fuller, and Anderson credibly testified that they knew Orcon East supplied the labor for the Devonshire project after Orcon no longer provided it, and Burpo credibly explained the reason for the change. Robert Fuller credibly testified that he told Liskey about the change, prior to the time Fraijo was dispatched by the Union. There is no reasonable doubt but what Orcon East, which was not on strike and which had an interim contract with the Union that provided for the dispatch of employees at Orcon East's request, completed the proper forms requesting such dispatch.

So far as the second major area of controversy is concerned, Robert Fuller credibly testified that he delivered the Orcon East request for Anderson's dispatch to Liskey. Liskey's denial of that delivery is given no credence. In addition to the fact that Liskey was not a credible witness, his denial appeared unrealistic and contrary to the clear shape of events indicating otherwise.

Liskey contended that Anderson's travel card was returned to his local because Anderson worked for Orcon, and Orcon's employees were on strike; he further contended that Fraijo was dispatched because he worked for Orcon East, which company was not on strike. Liskey said the cards of many other striking employees were returned to their locals during the same period Anderson's was returned.<sup>12</sup> Liskey said his actions were in accord with the Union's constitution, and had the approval of the District Council. This recitation by Liskey appeared strained and highly unlikely. It is given no credence. Anderson credibly testified that, when he talked with Liskey, Liskey said nothing about the Union's constitution, or about returning Anderson's travel card to his local. Anderson's testimony on this point had the support of Robert Fuller's testimony relative to his (Fuller's) conversations with Liskey.

Freda Fuller credibly testified that she prepared requests for all employees on the Devonshire project, on Orcon East stationery, June 30 and gave them to Robert Fuller. Robert Fuller credibly testified that he gave the requests for Anderson and Fraijo to Liskey, who accepted Fraijo's but rejected Anderson's with the statement that Anderson was not a member of Liskey's local. Lis-

key's contention at the hearing that Anderson was an Orcon employee, and thus was a striking employee, is given no credit. Clearly, Liskey knew, as Robert Fuller credibly stated he had told Liskey, that Orcon East was taking the place of Orcon on the Devonshire project, and that the request for Anderson was an Orcon East request, not an Orcon request. Robert Fuller previously had told Liskey that he then was working for Orcon East and had so notified the Union, and further, Liskey himself had taken Anderson off the Devonshire project. Respondent argues "Orcon East and Orcon attempted to circumvent the power of the Union to strike Orcon by having Orcon East complete the job Orcon started." Yet Liskey, without hesitation or protest, dispatched Fraijo and other employees to the job after he knew that Orcon East had taken over the job from Orcon, and there is no showing that the Union at any time prior to this controversy was concerned about the Orcon-Orcon East arrangement.<sup>13</sup>

Respondent argues that Anderson was not registered on the out-of-work list at the time Robert Fuller requested Fraijo and Anderson, but there is no indication, even in Liskey's testimony, that Fuller or Anderson was told that Anderson was denied dispatch because of that fact. Further, there is no evidence that registration on the out-of-work list is a condition precedent to dispatch. Finally, Liskey was responsible for Anderson's lack of work, and Anderson called Liskey on a daily basis to ask when he could return to the job; Liskey was fully aware that Anderson was out of work. This argument appears to be an afterthought, without merit. Orcon East was entitled, pursuant to its contract with the Union, to request Anderson by name, as the first journeyman on the job.

Anderson credibly testified that when he asked Liskey why he was not dispatched at the same time Fraijo was, Liskey stated "he no longer needed any Local 78 people to work that job, that he would staff it and run it with Book 1 people out of 398." That testimony is supported by Robert Fuller's testimony concerning Liskey's reason for refusing to dispatch Anderson. Anderson was eligible for referral, and the contract between Orcon East and the Union included an exclusive hiring arrangement. Under such circumstances, it was Respondent's burden to show, as it contended, that the refusal to dispatch Anderson was not a violation of the Act.<sup>14</sup> Respondent failed to meet its burden. Liskey's various explanations of the reasons for his denial of Anderson's dispatch are contrary to the record, and do not rebut the testimony of Anderson and Robert Fuller, which shows that the reason for the refusal was not related to any lawful union effort. Liskey's purpose clearly was to prevent Ander-

<sup>11</sup> The fact that a copy of the form was not available for introduction into evidence credibly was explained by Freda and Robert Fuller. Failure to produce a copy is given no weight, since it is clear that the form was completed as the two Fullers testified.

<sup>12</sup> No evidence of the sending of such other letters was introduced, other than Liskey's testimony. Assuming, *arguendo*, that they were sent, the fact would not affect any finding.

<sup>13</sup> Respondent argues that Fraijo was a supervisor, and that the District Council's policy was to accept travel cards of supervisory personnel and to reject others during a strike. However, as discussed above, the requests for Fraijo and Anderson were from Orcon East, which was not involved in a strike. Liskey said nothing to Fuller or to Anderson about refusing to dispatch Anderson because he worked for a company that was being struck. So far as the record shows, there was no labor dispute between Orcon East and the Union.

<sup>14</sup> *International Brotherhood of Electrical Workers, Local 592 (United Engineers & Construction Co.)*, 223 NLRB 899 (1976); *International Association of Heat & Frost Insulators & Asbestos Workers, AFL-CIO, Local 22 (Rosendahl, Inc.)*, 212 NLRB 913 (1974).

son's employment by Orcon East, and his actions were discriminatory, in violation of the Act.<sup>15</sup> As stated by the Circuit Court of Appeals for the Ninth Circuit:

On a number of previous occasions, we have held that it is an unfair labor practice in violation of [Section] 8(b)(1)(A) and 8(b)(2) for a bargaining representative to act in an unreasonable, arbitrary, or invidious manner in regard to an employee's employment status. *Kling v. N.L.R.B.*, 503 F.2d 1044, 1046 (9th Cir. 1975). See, e.g., *N.L.R.B. v. Bricklayers Local No. 7*, 563 F.2d 977 (9th Cir. 1977). By wielding its power arbitrarily, the Union gives notice that its favor must be curried, thereby encouraging membership and unquestioned adherence to its policies. *Laborers and Hod Carriers Local No. 341 v. N.L.R.B.*, 564 F.2d 834, 839-840 (9th Cir. 1977). No specific intent to discriminate on the basis of union membership need be shown; if the foreseeable result of discrimination is the encouragement of union membership, it must be supported by a legitimate purpose. *Id.*<sup>16</sup>

Respondent argues that the Union "chose to adhere to the provisions of the Constitution by limiting the dispatching of travelers to supervisory personnel," but as discussed above, the Union's constitution does not apply here, since Orcon East was not being struck, and in any event, other employees were being dispatched from the out-of-work list, to Orcon East at the same time Anderson was requested.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

In order to effectuate the policies of the Act, I recommend that Respondent be ordered to cease and desist from the unfair labor practices found herein, and from any like or related unfair labor practices, and to take certain affirmative action described below.

#### CONCLUSIONS OF LAW

1. Orcon and Orcon East are, and each of them is, and at all times material herein have been, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

<sup>15</sup> *International Union of Operating Engineers, Local 18, AFL-CIO (Ohio Contractors Assn.)*, 204 NLRB 681 (1973), enforcement denied and remanded 496 F.2d 1308 (6th Cir. 1974); 220 NLRB 147 (1975), enforcement denied 555 F.2d 552 (6th Cir. 1977). See also *United Brotherhood of Carpenters and Joiners of America, Local No. 1914, AFL-CIO (W & H Conveyors Systems, Inc.)*, 250 NLRB 1426 (1980).

<sup>16</sup> *N.L.R.B. v. International Association of Bridge, Structural and Ornamental Iron Workers, Local 433 [Associated General Contractors of California, Inc.]*, 600 F.2d 770 (9th Cir. 1979), enlg. 228 NLRB 1420 (1977).

2. Plumbers and Steamfitters Local 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material herein, Respondent and Orcon East have been parties to a collective-bargaining agreement under which Respondent has operated an exclusive hiring hall.

4. Respondent violated Section 8(b)(2) and (1)(A) of the Act by (a) operating its exclusive hiring hall in disregard of the provisions of the collective-bargaining agreement effective from July 1, 1980, to June 30, 1983, and, (b) refusing to dispatch Todd Anderson, who is entitled to dispatch pursuant to hiring hall procedures set forth in said collective-bargaining agreement.

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>17</sup>

The Respondent, Plumbers and Steamfitters Local 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Operating its exclusive hiring hall in disregard of the provisions of the collective-bargaining agreement effective from July 1, 1980, to June 30, 1983, or any successor agreement.

(b) Refusing to dispatch Todd Anderson, or any other individual, who is entitled to dispatch pursuant to hiring hall procedures set forth in a collective-bargaining agreement.

(c) In any like or related manner restraining or coercing employees or applicants for employment in the exercise of the rights guaranteed to them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Operate its exclusive hiring hall in a nondiscriminatory manner and in accordance with the provisions of the collective-bargaining agreement effective from July 1, 1980, to June 30, 1983, or any successor agreement.

(b) Make whole Todd Anderson for any loss of earnings and benefits which he may have suffered as a result of Respondent's unlawful conduct, to be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

<sup>17</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) Notify Cal Orcon East, Inc., in writing, that it has no objection to it requesting Todd Anderson for employment.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to compute the amount of backpay due under the terms of this Order.

(e) Post at its place of business copies of the attached notice marked "Appendix."<sup>18</sup> Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by its authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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<sup>18</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT operate our exclusive hiring hall in disregard of the provisions of the collective-bargaining agreement effective from July 1, 1980, to June 30, 1983, or any successor agreement.

WE WILL NOT refuse to dispatch Todd Anderson, or any other person, to his or her rightful employment.

WE WILL NOT in any like or related manner restrain or coerce employees in exercise of rights guaranteed them in Section 7 of the Act.

WE WILL notify Cal Orcon East, Inc., in writing, that we have no objection to the employment of Todd Anderson.

WE WILL make whole Todd Anderson for any loss of pay or benefits he may have suffered by reason of the discrimination against him, plus interest.

PLUMBERS AND STEAMFITTERS LOCAL 398,  
UNITED ASSOCIATION OF JOURNEYMEN  
AND APPRENTICES OF THE PLUMBING AND  
PIPE FITTING INDUSTRY OF THE UNITED  
STATES AND CANADA